No. 16,317

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

GEORGE J. TOWLE and FRED GEORGE, individually and as copartners doing business as TOWLE-GEORGE TURKEY LOG COMPANY, also known as TOWLE FOOD PRODUCTS CO., a partnership,

Appellants,

vs.

NORBEST TURKEY GROWERS ASSOCIATION, a corporation,

Appellee.

APPELLANTS' REPLY BRIEF

EDGAR B. STEWART,
HOWARD H. BELL,

Financial Center Building,
Oakland 12, California,

CARL HOPPE,
JAMES F. MITCHELL,

2610 Russ Building,
San Francisco 4, California,

Attorneys for Appellants.

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APPELLANTS' REPLY BRIEF

Appellants file this brief in reply to appellee's answering brief. The argument in appellee's brief does not respond to the issues entirely in the order of appellants' opening brief, making exact correlation of the argument difficult. Therefore, in an effort to put the issues in orderly fashion appellants here readopt the order of their opening brief. References to pages in each of the prior briefs indicate where the cor-

responding subject matter is there discussed. References to appellants' opening brief are (AOB —), references to appellee's answering brief are (AAB—), and to the record (R —) and the exhibits (Pl. Ex. or Def. Ex. —) as before.

STATEMENT OF THE CASE

Questions Presented

Norbest has stated the issues somewhat more broadly than have appellants. Nevertheless, the parties agree that the principal issue on this appeal is whether Norbest's agency included authority to extend credit to Illinois as it did. This specific issue is not entirely factual as Norbest contends but involves a question of law as to which party had the burden of proving that Norbest did have authority to extend credit.

Norbest apparently concedes that it is liable for any losses to appellants resulting from its extension of credit, if Norbest did not have such authority.

The Evidence

Norbest, in restating the evidence, charges that appellants have "ignored or misstated certain crucial facts and findings" (AAB 5). But in so restating the evidence, and throughout its brief, Norbest has completely ignored the most crucial fact in the entire record. Although Norbest admits that the agreement among the parties was confirmed at the August 10, 1954 meeting in Salt Lake City (AAB 12), it has completely ignored the undisputed documentary evidence that the understanding reached there was that the disputed turkey logs were to be *paid for* by August 20, 1954. (Pl. Ex. 13, R 135.)

The transfers here in dispute, itemized in appellants' opening brief (AOB 13, 25), were not paid for by the agreed date of August 20, 1954, but were made on and, indeed, after Illinois' default without any permission, express or implied, from appellants. Yet Norbest claims it made the disputed transfers in accordance with its agreement with appellants by shipping before August 25, 1954 (AAB 13, 14). Norbest's claim simply is not supported by the evidence. The August 25, 1954 date refers only to tonnage in Los Angeles as appears from the following pertinent phrase from Mr. Beyers' letter (Pl. Ex. 13, R 135):

> "* * * approximately 88,000 pounds stored on the Pacific Coast will be relabeled and paid for by Towle Foods Products Company by August 20th, except tonnage in Los Angeles, to be paid for by August 25th."

Only tonnage other than that in Los Angeles is here in dispute (AOB 12, 13, 25).

Norbest throughout its brief has misstated appellant Towle's contemporaneous understanding that Illinois has "also agreed to be *invoiced and pay for some 80,000 lbs.* and pay up *by August 20*" (emphasis added, Def. Ex. A, R 145-6). Norbest from this language infers that the agreement reached in Salt Lake City was that Illinois merely was to be "invoiced" (AAB 3) and that Illinois would pay up "by a later date" (AAB 14). This clearly is not what appellant Towle stated. He stated without dispute that Illinois would be *invoiced and pay up by August 20.* There is no mention whatsoever of "invoicing on open account" as Norbest contends (AAB 13).

At the time of the August 10, 1954 meeting Illinois was already in default under its contract with appellants. The obvious purpose of the meeting was to insure transfer of the turkey logs and payment by Illinois by August 20, 1954, with a later date of August 25th applying only to tonnage in Los Angeles. Regardless of whether or not more limiting instructions were ever given to Norbest that shipments were to be only on a sight draft bill of lading basis, the agreement reached at Salt Lake City clearly was that *Illinois was to pay up by August 20th* on the disputed transfers. Yet, on August 20, 1954 Illinois was in default and, nonetheless, on that date and for several days thereafter, Norbest did extend credit to Illinois on the disputed transfers. Norbest would have this Court completely ignore the "complicated mathematics" clearly detailing this violation of Norbest's authority (AAB 15).

Every one of the enumerated transfers was made on or after the August 20, 1954 deadline with the exception of the transaction on invoice T-855. This shipment was transferred to Illinois on credit on August 16, 1954 in clear violation of *specific instructions* from Towle to make the transfer on a sight draft basis. Norbest admits that these instructions were received from Towle and yet argues that the partial transfer on an open account basis was not in violation of such instructions (AAB 10 footnote). There is nothing in the record showing Norbest had authority to deviate from these specific instructions. Norbest does not respond to appellants' argument (AOB 13).

Norbest in discussing the correspondence prior to the August 10, 1954 meeting (AAB 7-12) contends

that appellant Towle's letter of July 22, 1954 (Pl. Ex. 8, R 123-124) was in the nature of an inquiry only; that Norbest's reply of July 30, 1954 (Pl. Ex. 9, R 125-6) did not consent to any instructions presented in that earlier letter; and that Norbest consented to these instructions for the first time in its letter of August 6, 1954 (Pl. Ex. 12, R 133-134). Whether appellant Towle's initial letter be characterized as one of inquiry or as one of instruction, it is clear on its face that Towle authorized Norbest to ship and to invoice Illinois directly on the basis of the $1.05 per pound Illinois had agreed to pay appellants, to collect payment from Illinois, to credit the payments to appellants' account, and remit the 10¢ per pound profit to appellants' office. Regardless of when it agreed to do so, Norbest acted under this authorization and must be bound by it.

It is manifest that Norbest agreed to this authorization in its reply of July 30, 1954 which in the very first line specifically refers to Towle's letter of July 22, 1954 and then states in the second paragraph:

> "* * * We will be glad to follow your instructions, and at such time as a credit accrues to you, we will forward the money to your organization in Walnut Creek, California."

The record discloses no instructions to forward accrued credits to Walnut Creek to which this statement by Norbest could possibly refer other than the language in Towle's July 22, 1954 letter. Norbest asserts that it was not until August 6, 1954 that Norbest "for the first time" advised appellants that "it would be willing, on behalf of the partnership, to make shipments of the

balance of the turkey logs to the Illinois corporation directly, to bill the Illinois corporation at $1.05 per pound, and to credit the partnership's account with the difference" (AAB 9) and this was so found by the trial court (Finding VII, R 37-8). It is true that August 6, 1954 was the first time Norbest so advised appellants in those particular words. However, the instructions of Towle's initial letter manifestly were accepted prior to that date in its letter of July 30, 1954.

Norbest (AAB 11) belittles the instruction in appellant Towle's letter of August 3, 1954 to Norbest (Pl. Ex. 11, R 130-2) that:

> "* * * As for future deliveries, I think that the sight draft payable to Norbest is the only solution to insure prompt payment."

This statement is entirely consistent as a direction to Norbest in view of appellant Towle's definition of the term "invoice" as "a C.O.D., a sight draft" (R 78).

Norbest throughout its brief contends that the term "invoice" means an open account credit transaction (AAB 20, 21-26, 32). This definition of the term is not supported either by the record or by any cited legal authority. Indeed, the only express definition of the term "invoice" and of the term "invoice and pay for by a date" is the testimony of appellant Towle (R 78):

> "* * * when you invoice, invoice and pay for by a date, I think that is significant of probably —aside from a C.O.D. a sight draft, a C.O.D."

Clearly, Towle's definition of the term does not contemplate a credit transaction and it is significant that the first time the word "invoice" appears in the foregoing documentary evidence is the initial use of the

term by Towle in his letter of July 22, 1954. There is no other evidence in the record that the word "invoice" or "invoice and pay for by a date," to wit, by August 20, 1954, means a credit transaction contemplating payment after that date.

With this review of the evidence, appellants submit that, regardless of whether more limiting specific instructions to ship only on a sight draft bill of lading basis were made or not, it is uncontrovertible that the disputed transfers exceeded the limited authority of Norbest as is evidenced by the documents showing the agreement reached at the August 10, 1954 Salt Lake City meeting. Those documents definitely show that the parties agreed that the balance of the turkey logs held in dispute were to be invoiced and paid for by August 20, 1954. Nonetheless, when Illinois was in default on its payments, Norbest made the deliveries here in dispute on and after August 20, 1954.

ARGUMENT

Norbest has misstated appellants' argument (AAB 4-5). Appellants' position is and always has been that they did not confer upon Norbest, authority to make the disputed transfers to Illinois on a credit basis. The authority given Norbest did not include authority to make any credit transfers and particularly none after the August 20, 1954 deadline. In addition, appellants contend that Norbest's authority was even further limited by specific instructions given to Norbest to the effect that the disputed transfers were to be made *only* on a sight draft bill of lading basis.

Uncontroverted documentary evidence establishes that the disputed transfers were to be invoiced and

paid for or relabeled and paid for by August 20, 1954. It was impossible to meet this deadline except by transferring on a sight draft or C.O.D. basis. Credit transfers clearly could not have been contemplated, particularly on transfers made as late as August 20th.

Whether or not more limiting instructions relating to sight draft shipment only were given, appellants contend Norbest had no authority to make the disputed transfers on credit. Moreover, since those same undisputed facts establish that Norbest did not comply with the specific authorization granted and agreed upon, under the applicable California law, Norbest has the burden of accounting to appellants or proving its authority to extend credit as it did. The trial court erroneously placed the latter burden of proof upon appellants.

NORBEST AGREED TO ACT AND DID ACT AS THE AGENT OF APPELLANTS.

Appellants recognize the rule of law that a principal must prove the general scope of authority granted and appellants have done so (AAB 17-19). There is no dispute over the trial court's findings that Norbest undertook to act and did act as appellants' agent for making the disputed transfers of turkey logs directly to Illinois upon Illinois' order, for invoicing Illinois, and for collecting the purchase price of $1.05 per pound directly from Illinois (Findings VIII, IX; AAB 13). But as agreed upon at the August 10, 1954 meeting in Salt Lake City the disputed shipments were

to be invoiced and paid for by August 20, 1954. Norbest itself stated (Pl. Ex. 13, R 135):

> "* * * approximately 88,000 pounds stored on the Pacific Coast will be relabeled and paid for by Towle Foods Products Company by August 20th, except tonnage in Los Angeles, to be paid for by August 25th."

The foregoing language establishes an August 20, 1954 deadline by which Norbest's duties relating to the disputed transfers were to be performed. It is manifest that the August 25, 1954 date refers only to "tonnage in Los Angeles" not here in dispute. The contemporaneous letter of appellant Towle (Def. Ex. A, R 146) confirms this deadline by which Norbest's duties were to be performed. He stated that Illinois:

> "* * * have also agreed to be invoiced, and pay for some 80,000 lbs. and pay up by Aug. 20. * * *"

Norbest throughout its brief completely ignores this deadline of August 20th agreed upon by the parties. Norbest in restating findings VIII and IX infers that the August 25, 1954 date applies to the disputed transfers (AAB 22). This is not the case and the trial court did not so find. Judge Carter found merely that all of the 190,000 pounds were to be transferred by August 25th. The finding is accurate so far as it refers to the whole amount of turkey logs contracted for, but the uncontroverted documentary evidence establishes that the parties set up an earlier deadline for the disputed transfers.

The undisputed documentary evidence further shows that the disputed transfers of turkey logs were not in fact invoiced and paid for by the August 20,

1954 deadline. (Pl. Ex. 16-A, R 141.) Notwithstanding that the balance of the turkey logs, other than those in Los Angeles, had not been paid for by August 20th as agreed, Norbest made the disputed transfers of turkey logs to Illinois on a credit basis on August 20th, 23rd and 25th. Payment of the $1.05 purchase price for these shipments was not collected by August 20th.

Whether the term "invoice," as here used, means "invoice on open account" as Norbest contends (AAB 21-26), "a sight draft, a C.O.D." as appellant Towle testified (R 78), or something else, Norbest clearly has not complied with what it had been instructed and authorized, indeed, what it had agreed, to do. Appellants submit that with the scope of Norbest's agency thus established, under California law Norbest must assume the burden of proving that it has properly accounted for the disputed turkey logs or their purchase price or prove its authority, if any, to extend credit as it did.

UNDER CALIFORNIA LAW NORBEST AS APPELLANTS' AGENT HAD THE BURDEN OF PROVING ITS AUTHORITY TO EXTEND CREDIT.

Although Norbest concedes that California law is applicable to the instant case (AAB 17) it cites no California authority to support its position with respect to the burden of proof on the specific credit issue presented here. Norbest refers only to general authorities which do not even purport to state California law. It cites no applicable California authority and quotes only general propositions of law from *Mechem* (AAB 28, 31); the *Restatement of the Law of Agency*

(AAB 30); and the law of South Carolina as recited in *Lowry* v. *Atlantic Coast Line R. Co.* (1912), 92 S.C. 42, 75 S.E. 278 (AAB 29). These authorities state generally that a principal has the burden of proving the extent of the agency and the principal's specific instructions. These general propositions may be true, but they do not refer to the particular fact situation in the case at bar and they do not state the California law on this point.

On the specific issue of burden of proof appellants have relied upon *Leland* v. *Oliver; Lahr* v. *Kramer; San Pedro Lumber Co.* v. *Reynolds; Schwarting* v. *Artel;* and *Reynolds* v. *Hook,* as reciting the California law that the burden of proof of its authority to extend credit, if any, rests upon Norbest in this case (AOB 34-7). Norbest attempts to distinguish these cases solely by stating that they do not apply to the present situation (AAB 27) in that they involve situations where the agent had agreed "to sell"; that Norbest did not here "agree to sell"; and that the sale of the disputed turkey logs "had already taken place on June 10, 1954" by virtue of the contract to sell (Pl. Ex. 6, R 121, 16-22) between appellants and Illinois. This purported distinction is untenable.

No sale was made on June 10, 1954 and in spite of its contention that a sale was made then (AAB 27), elsewhere in its brief Norbest admits that the agreement was merely an "agreement to sell" and not a sale in and of itself (AAB 2). Under California law a sale is defined in Civil Code, Section 1721:

> "A sale of goods is an agreement whereby the seller *transfers* the property in goods to the

buyer for a consideration called the price." (Emphasis added.)

Clearly no sale was made on June 10, 1954 under California law as no transfer of the property in the disputed turkey logs took place at that time. The property was to be transferred at later dates in Chicago. The contract between appellants and Illinois was not a sale but merely a contract to sell.

The transaction in the present case which clearly meets the California Code definition of a sale is the Norbest transfer of title of the disputed turkey logs, on behalf of appellants, to Illinois in exchange for the agreed price of $1.05 per pound. It was not until this transaction that the property in the turkey logs was transferred. Therefore, Norbest clearly was an agent "to sell," or so closely analogous to one, that the facts in this case and those cited are indistinguishable.

Norbest states that *Leland* v. *Oliver* is different from the present case since "appellants have not proved that Norbest was to sell and dispose of the turkey logs for cash" or that they have not been paid (AAB 27-28). Indeed, the documentary evidence, namely, the contemporaneous letters written at the time of the August 10, 1954 meeting in Salt Lake City (Pl. Ex. 13, R 135; Def. Ex. A, R 146), on its face establishes that Norbest agreed to transfer turkey logs to Illinois and was to collect therefor the $1.05 per pound purchase price by August 20, 1954. It is further undisputed that Norbest did not collect this cash purchase price by August 20, 1954 nor did Norbest pay it to appellants. Appellants submit that they have proved everything necessary under the *Leland* rule

to shift the burden to Norbest to account for the turkey logs or their purchase price.

Norbest then takes issue (AAB 30) with *Luckehe* v. *First National Bank of Marysville* (1924), 193 Cal. 184, 223 P. 547 and *Stetson* v. *Briggs* (1896), 114 Cal. 511, 46 P. 603 cited by appellants as California authority that, in situations analogous to the case at bar, an agent to collect money must collect only money (AOB 38-9). Anything short of actual cash is insufficient. These cases clearly place the burden on the agent to prove his authority to collect the principal's funds other than in the form of cash or money. Norbest contends it was not a traditional agent for collecting money and further that it did receive nothing but money from Illinois. Indeed, it is undisputed that Norbest accepted only the credit of Illinois by the August 20, 1954 deadline as payment for the disputed transfers of turkey logs. It did not even receive part payment in cash. Appellants submit that, whether Norbest was a "traditional" agent for collection or not, it nevertheless had agreed to collect $1.05 per pound for the disputed turkey logs by August 20, 1954. This it did not do and as a consequence, it now has the burden of accounting to appellants for the $1.05 it agreed to collect or of proving its authority, if any, to extend credit as it did.

Appellants submit that Norbest has not shown any of appellants' authorities to be inapplicable to the present facts and has referred to no California authority to the contrary. In fact, it has referred to no California authority whatsoever to support its contention that the

burden of proof is properly allocable to appellants on this issue.

THE DISTRICT COURT ERRED BY NOT ALLOCATING TO NORBEST THE BURDEN OF PROVING IT COULD EXTEND CREDIT.

Norbest states it is impossible to infer from the memorandum for judgment that the trial court allocated a burden of proof one way or the other (AAB 33).

Appellants contend an inference of allocation of the burden to appellants necessarily follows from the memorandum for judgment considered with the fact that no finding was made that Norbest was actually authorized to extend credit to Illinois. The trial court found merely that Norbest did not violate any "instructions" from appellants (Findings IX, X, R 39-40) and that Norbest agreed to "invoice" Illinois (Finding VIII, R 38) without any attempt to define the term "invoice" as meaning a right to extend credit. Thus, the court found not that Norbest could extend credit, but merely that what Norbest did was not in violation of any instructions or agreement.

The language of the court that "* * * the evidence that credit could not be extended by the agent was ambiguous, and therefore not persuasive * * *" together with the foregoing findings, in which there is no mention of the word credit, can only result in the inference that the court placed upon appellants the burden of showing Norbest could not extend credit in order to establish their right to recovery. This allocation of the burden of proof was erroneous under the California law.

IRRESPECTIVE OF WHETHER THE DISTRICT COURT PROPERLY ALLOCATED THE BURDEN OF PROOF, THE EVIDENCE IS NOT SUFFICIENT TO SHOW THAT NORBEST COULD EXTEND CREDIT.

The evidence in the present record does not support Norbest's contention that it was authorized to transfer the disputed turkey logs on an "open account" credit basis (AAB 20-26). Moreover, the court did not specifically find that Norbest was authorized to "invoice an open account" (AAB 23).

Norbest has been able to point to no specific grant to it of authority to extend credit to Illinois. Appellant Towle did not orally grant such authority (R 70) nor does the documentary evidence expressly state that Norbest could "extend credit" or "invoice an open account." To support its contention Norbest can only imply such authority by reference to the term "invoicing" appearing in the correspondence preceding and contemporaneous with the August 10, 1954 meeting, and to the practice of appellants prior to the agency.

Although the foregoing correspondence initiated by Towle uses the term "invoice" or "invoicing," it is always used together with language relating to collecting the purchase price of $1.05 per pound, such as "invoicing and collecting" (Pl. Ex. 11, R 131) or "invoiced and pay for" (Def. Ex. A, R 146). This correspondence does not state "invoice on open account" and receive payment only if tendered, but rather it places upon Norbest the affirmative duty of *invoicing and collecting* the purchase price. The testimony of appellant Towle confirms this interpretation

of the term "invoice," first used by Towle, as meaning "a sight draft, a C.O.D." (R 78) and there is no other express definition of the term in the entire record.

Moreover, the correspondence contemporaneous with the August 10, 1954 meeting establishes that the parties agreed that the disputed shipments were to be invoiced and paid for "by August 20, 1954" (Pl. Ex. 13, R 135; Def. Ex. A, R 146). The transfers were not to be made "immediately" with payment to follow later by August 25th as Norbest contends (AAB 14, 22), but to be invoiced and paid for and this was to be done by August 20th. The documentary evidence clearly does not establish any grant of authority to extend credit or to "invoice on open account," and particularly not beyond August 20, 1954.

Authority to extend credit cannot be implied from appellants' conduct prior to establishment of the present agency relationship (AOB 49; AAB 23-24). The underlying contract (Pl. Ex. 6, R 16, 121) called for cash on delivery (AOB 46) and not "before" (AAB 34) or after. Illinois agreed to pay "forthwith" the price of the logs delivered. "Forthwith" is defined in *Webster's New International Dictionary*, 2nd Ed., as "immediately." Regardless of how the parties operated under this contract, its terms clearly required cash on delivery.

Although up to July 22, 1954 appellants had not required cash on delivery on all shipments to Illinois as prescribed by the contract, by July 22, 1954 it became apparent to appellants and to Norbest that Illinois was substantially in default and that some-

thing had to be done to insure prompt payment (AOB 46-7, items 5, 6, 7). For this reason, in authorizing Norbest to transfer logs directly to Illinois and collect the purchase price therefor, Towle instructed that "I think the sight draft payable to Norbest is the only solution to insure prompt payment" (Pl. Ex. 11, R 132). For the same reason, the Salt Lake City meetings were held.

Hence, even though Norbest was aware of appellants' prior relaxation of the contract terms (the record does not clearly show that it was), the circumstances existing at the time the agency was created, Illinois already in default, Towle's instructions to ship on sight draft, and the agreement that the logs were to be invoiced and paid for by August 20th, preclude any inference that Norbest was authorized to extend credit to Illinois or to "invoice on open account"—particularly not after August 20, 1954.

Whether the agency *was* or *was not* clearly spelled out so as to permit invoicing on open account (AAB 24-5), Norbest has still violated its agency with regard to the August 20th deadline by which the disputed shipments were to have been made, invoiced and paid for. This deadline is not ambiguous. The disputed shipments of turkey logs were made on and after August 20th as shown in appellants' opening brief (AOB 13, 25) when at the time they had not been paid for. Shipment by Norbest was clearly in violation of the agency authorized and agreed upon. Norbest as appellants' agent was under a clear duty to "retain possession" of the disputed turkey logs until "payment or tender of the price" as provided by *Cali-*

fornia Civil Code, Section 1774 (AOB 60-63). Notwithstanding Illinois' default, Norbest did not retain possession of the subject turkey logs but transferred them on credit, thereby causing the losses for which appellants here seek recovery.

Appellants submit that the documentary evidence, the undisputed testimony, and the disputed testimony considered only most favorably to Norbest, is not sufficient to show that Norbest could extend credit to Illinois and certainly not beyond the August 20th deadline. The findings itemized by appellants (AOB 50, 64-66) are therefore "clearly erroneous" and subject to this Court's correction. Moreover, although the documentary evidence clearly establishes the August 20th deadline, and its existence is not disputed anywhere in the record, the trial court made no finding relating to it. Clearly, it is within the power of this Court to draw its own conclusion from such undisputed evidence (AOB 64).

THE DISTRICT COURT ERRED IN EXCLUDING AS HEARSAY CERTAIN TESTIMONY OF APPELLANTS.

Norbest takes issue with appellants' contention that the proffered testimony was not hearsay since it was not "offered to prove the truth of the matter stated," but was offered merely to prove that certain statements were made (AOB 52-6; AAB 38-40).

This Court in *Fred Harvey Corporation* v. *Mateas* (9th Cir. 1948) 170 F. 2d 612, 614 held admissible similar extrajudicial declarations solely for the purpose of showing that such utterances had been made. The Court there referred to well-established California

authority including *Smith* v. *Whittier* (1892), 95 Cal. 279, 30 P. 529, where the court stated, pages 293, 532:

> "* * * If the fact sought to be established is that certain words were spoken without reference to the truth or falsity of the words * * * the testimony of any person who heard the statement is original evidence and not hearsay * * *"

Appellants also contend that the testimony was admissible under Section 1850 of the California Code of Civil Procedure (AOB 56). Norbest attempts to refute this contention by stating that the subject declarations preceded the "transaction" contemplated by C.C.P. 1850 and that the authorities appellant has cited hold that the declaration must be "at the same time" as the transaction it is offered to explain. (AAB 40-41.) *Airola* v. *Gorham* (AOB 56) supports appellants' position even if only the August 10th meeting were considered as the "transaction." Contrary to Norbest's statement of the case (AAB 41), the declaration in *Airola* was made "a day or two" before the signing of the deed it was offered to explain. The appellant there tried to distinguish the facts from the *Sethman* case (AOB 56) because of the time element, just as Norbest does here. The court said at page 51, 82:

> "* * * The suggested distinction is not sound. The conversation clearly 'formed a part of the transaction' within the meaning of the Code of Civil Procedure, section 1850. * * *"

Norbest's two authorities (AAB 41) refer only to spontaneous declarations, which are not here involved.

For the foregoing reasons the testimony in the case

at bar has been erroneously excluded. Moreover, such exclusion prejudiced appellants' case by eliminating relevant evidence from which the trial court might have, and should have, concluded that the parties agreed to sight draft shipment only.

CONCLUSION

Appellants submit that the judgment of the District Court should be reversed and judgment entered for appellants in the amount of $19,558.92 plus interest and costs.

Dated: November 16, 1959.

EDGAR B. STEWART,
HOWARD H. BELL,
Financial Center Building,
Oakland 12, California,

CARL HOPPE,
JAMES F. MITCHELL,
2610 Russ Building,
San Francisco 4, California,

Attorneys for Appellants.